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DEPARTMENT OF NATURAL RESOURCES

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June 16, 2016

Sandy Ranch Utah
Joseph Venuti
1853 B Chesapeake Circle
Johnstown, CO 80534

Subject: Matters concerning enlargement of the Oak Creek- Park Pasture Ditch

Dear Joby:

In response to your email concerning the Park Pasture Ditch (also and herein referred to as the Oak Creek Ditch). Prior to your involvement, the previous ranch managers have maintained a consistent and high level of communication with both the Water Commissioner and the Division of Water Rights concerning management of water in the area. After reviewing your email, a response is in order to clarify some of the topics you discussed.

Over the last 3 years since the sale of the Sandy Ranch to the new owners in Colorado, the Division of Water Rights have requested a formal notice or letter, be provided by the owners, formalizing the point of contact for water matters regarding the Sandy Ranch-Utah. Over the last few years we have dealt with Steve Dalton, Scott Cameron, Myron Moore, and now you. Since you have been asserting yourself as the point of contact, we would like to receive, in writing, such an endorsement or clarification from the Owners, along with their contact information. Once received, this will be shared with the Dam Safety section also.

Much of what we do with water management throughout the state relies on open and regular communication; it significantly helps to coordinate work between the water users and water commissioner and division staff. When everyone is "in the know", we all are able to do our jobs better.

Some past communication with you is worthy of recap. {Other than Verbal at the annual meeting in February 2016}, the last three communications the division had from you were:

9/28/2015:

We have Jackson Construction (out of Wayne County) scheduled to replace the head gate on the Oak Creek Dam, this has all been coordinated with the USFS; I will forward you a copy of their letter approving the work.

I do not have an exact date with Jackson's but as soon as I do I will let you know so you can try to work a visit into your schedule; I am assuming it will be in the next 30 days.

Also, it appears that Wiley and Myron have located the potential leak, and since the water level is low enough now, while Jackson's are working on the dam they are going to fix it as well.

The Oak Creek Reservoir Head Gate is our top priority, and after that is complete we will focus on the Oak Creek Diversion. If the weather permits we will try to get it done this fall, if not it will be a spring/summer project. I will keep you and Randy updated on any actions there.

It doesn't look like we will be sending any additional water through park pasture this fall, so the same 1 cfs that is flowing there now will continue to be diverted at the Oak Creek diversion for the Notam water users. If this changes I will coordinate it with Kay Durfey, and I will also keep you and Randy updated on any change/agreement.



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10/8/2015:

1. *The work on the internal parts of the Oak Creek head gate is done, and the contractor piled the logs/debris as was requested by you/Everett during the visit this spring. I didn't know if they would get in to do it this week with the weather, but they did and it is complete. The USFS is planning to come in and burn the brush pile this winter when the snowpack permits.*
2. *The second item we will be working on this fall is the ditch from the Rosebud Head gate to Lower Bowns Reservoir; more specifically the removal of the debris that has accumulated and the removal of willows, etc., along the route. I have a meeting with the USFS, and the Sandy Ranch Manager there tomorrow, for an official walk through/USFS approval. We will have a mini-excavator there next week to begin work on the job. While we are there working we will shovel the sand/debris that has built up at the head gate itself. The goal is to have this whole ditch cleaned before the water gets turned into it on November 1, 2015.*
3. *I am not sure if we will get to the Diversion above Oak Creek Campground this fall or not, it may end up being next spring. Regardless when we do the work, the proper paperwork (Stream Alteration, etc.) will be filled out ahead of time and I will keep you updated on it.*

I will update you after my meeting tomorrow if there is anything specific that the USFS brings up.

Since that time and other than brief contact with the Water Commissioner, there were no further updates and progress-status until this week: 6/13/2016: {Note that I have numbered the paragraphs for later reference in the responses that follow.}

- 1) *Randy Bradbury asked me to contact you regarding the Park Pasture Ditch; he says that you need me to contact you because we need to get permission from Kay Durfey to use this ditch; can you please explain to me exactly what you mean by that statement? It is an irrigation ditch on USFS property, which the USFS recently gave the Utah Sandy Ranch, LLC written permission to clean and use; and all funds paid to the contractor for the work on the ditch were from the Utah Sandy Ranch, LLC.*
- 2) *As you know the Utah Sandy Ranch, LLC had John Mabey complete an in depth review of the Oak Creek/Pleasant Creek water rights, proper points of diversion/measurement, etc. I know there were approximately 150 pages of court documents that he reviewed, but he made no mention of the Ranch ever having to obtain Kay Durfey's permission to move their own water on USFS land. It just seems like an odd stipulation, but that wouldn't be the first odd thing with water rights. So if there is a document that I am unaware of requiring the Durfey's permission for use of the Park Pasture Ditch, can you please scan/email me a copy, and a copy to John, for our records.*
- 3) *Also, WR 95-444 (and it's change applications) give the Utah Sandy Ranch the Right to Store 3,325 Acre feet in Lower Bowns, this storage right is year round from 1-1 to 12-31; with irrigation uses of the water from 4-1 to 10-31. My concern is that two of the sources for the Sandy Ranch water allowed to be stored in Lower Bowns are Oak Creek Reservoir (Upper Bowns) and Oak Creek Ditch. How is it possible to get the water from Oak Creek Reservoir and the upper Oak Creek Drainage into Lower Bowns without using the Park Pasture Ditch? (side note – is the Park Pasture Ditch the same thing as the Oak Creek Ditch?)*
- 4) *I realize that this is probably the first time since you have been with the Department of Water Rights (it is the first time I can remember since being a kid) that the Sandy Ranch has managed their water properly for the full irrigation season. i.e. storing enough water in Lower Bowns to irrigate the full season. As you know, the management prior to this year (Both Tercero for 20+ years and the Utah Sandy Ranch in 2014/2015) simply allowed Upper Bowns to overflow and run down the Oak Creek drainage, a majority of it was lost, and only water from Pleasant Creek (remaining after Notom's Senior water right) was stored in Lower Bowns; the reservoir hasn't been full in years and as a result the Ranch was almost always out of water by early August, which is unfortunate because they have the largest water rights in the area. So it is*

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nice to see the new managers actually filling the Reservoir with water other than just Pleasant Creek and managing the flow of Oak Creek efficiently.

- 5) I will call you tomorrow to discuss this in more detail, and to discuss multiple areas where we plan to do maintenance on Flumes, Diversions, etc. The Park Pasture Ditch was the first maintenance on the system this year, and hopefully by the end of the season we can have a majority of things cleaned up.*
- 6) One last question, do you know when Everett is planning to come down to do the dam inspections? I am trying to coordinate with Campbell Scientific and Intermountain Environmental to visit at the same time, so they can give us cost estimates for repairing or replacing the measurement and control modules on the dams.*

---What I have learned from your email above:

PP1-3: Sandy Ranch made the effort and cleaned the Oak Creek to Park Pasture ditch recently, other than emails last fall about plans to do so, the work was apparently recently just accomplished, with no recent notices provided to the Water Commissioner, advising him of this activity had occurred. Previously, Notom was perceived as the primary and regular beneficiary of the late irrigation season water transfers of 1 CFS from Oak Creek to Pleasant creek, usually late in the summer. We have no direct knowledge of use of the Parks Pasture ditch for other than that purpose occurring during the irrigation season. Therefore it is our assessment that the Parks Pasture ditch belonged to the Notom users. After review of PP3, we now understand Sandy's motivation to enlarge the ditch carrying capacity to facilitate transfers of additional water over the traditional 1 CFS to Notom through Parks Pasture. Since ditch was previously only used for small quantities (1cfs) and improvements were necessary to reliably carry more than that amount without losing higher flow quantities over the top of the ditch.

PP2: Although John Mabey may have completed a review of documents concerning the Oak Creek/Pleasant Creek rights, the stipulation you are looking for is not an "odd thing" in water rights but instead a basic tenet of Utah water law that most well versed water users are duly conscious of. I would not expect John to have to point this out to you. To this end, you should take some time to review the Utah Water Law Statues. In there you will find: The "permission" we sought is addressed by the provisions and perspective provided by Utah Statute covered under: **73-1-7. Enlargement for joint use of ditch**, I suggest you review this provision to understand my concern in this case. In light of the recent work, some elements of the provision were not followed. Namely notice and agreements, along with times the work was accomplished and other provisions that must be followed to address the intent of this section. Simply getting permits and paying for the work done, does not satisfy all the aspects of the statute, and therefore "automatically" constitute an agreement, unless all parties involved are "on board". At this point we request that you comply with the provision and formalize those agreements.

Additionally, do not conduct transfers from Oak Creek to Rosebud without coordinating this activity with the other water users and Water Commissioner (see 73-1-7, 4a, 5a, 6b). This is especially important since the Park Pasture flows will end up co-mingled with the Pleasant creek flows before they get to the Rosebud diversion structure. If you plan on doing this during the irrigation season, transport losses through the Parks Pasture must be considered for actual delivery and later split at Rosebud. If this is done during the Irrigation season, I am requiring a new measuring device to be installed before the Park Pasture ditch confluence to Pleasant Creek, to document actual deliveries through Parks Pasture. (see 73-1-7, 3) .

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After installation of the new measuring device, irrigation season transfers, when requested, will be handled and measured by the water commissioner, not Sandy Ranch acting independently.

If you so desire an irrigation season transfer from Oak Creek to Lower Bowns, please request and coordinate these with the Water Commissioner, and be advised that he is the only one authorized to manage these gates. This will require additional WC time and may incur additional labor costs not budgeted this year, that will be tracked. If you had communicated your intentions to do so, perhaps the project of cleaning the Parks Pasture ditch would have included this new measuring device as part of that effort. I would suggest Sandy Ranch consider a bypass system for such transfers, to avoid the comingling the transfer stream when not necessary. This will negate the need for the new measuring device.

Previously, this type of transfer had only occurred once during the last 10 years of my involvement and was accomplished in the off-irrigation season, (no water going to Notom) and the total of all the Oak Creek water transferred, was sent directly to Lower Bowns. Prior to this event, Steve Dalton had specifically communicated with the Durfey's of Notom asking permission to do this. The existing mindset then was the same as Steve's that the Park Pasture ditch's primary function was to transfer the 1 CFS necessary to make Notom whole, when they were below the 6.3 CFS at their diversion from Pleasant Creek. On season transfers of this nature are been out of the ordinary and the reason for providing this notice to Notom, especially since it involved co-mingling of water from two streams for two water users.

The Division and the Water Commissioner believe your initiative to move some Oak Creek water to Lower Bowns through Parks Pasture is a good idea and prudent. We would like to accommodate this effort and make sure it is done properly and fairly to both Sandy Ranch and the Notom Users.

Although we had been discussions with Notom in 2015 and 2016, about who was actually was going to work on the Parks pasture ditch, we are glad you made the effort and did accomplish that work, much to the benefit of Notom for their "primary" use of the ditch. Frankly we are happy when ANY work is done, it seems that much of the time the systems fall in to disrepair and needed fixes seem to languish for years.

One example is the re-work is needed at The Oak Creek Diversion structure, which for years has leaked past the old gate and need(s) a significant amount of work to stop the leak. The leak sends Oak Creek water intended for Sandy Ranch, instead down through Parks pasture (when it is not needed) for Notom Use. What we have been requesting of the Sandy Ranch contacts, for about the last 7+ years, was to fix the diversion gate area on Oak Creek, near the campground, so the unnecessary losses to Park Pasture can be controlled to only when needed to supply water to Notom, this is a direct benefit to Sandy Ranch.

Last year in discussion with Myron, about this, he said he opened the Oak Creek gate a number of times (we are still not sure why) and when he found it back in place, said he "threw it as far as he could". After that gate disappearance, the Water Commissioner had to use a tarp and a dirt plug in place of the missing gate to prevent water from being transferred. Regardless, this chronic leak needs to be addressed and a lockable gate system installed there. Keep us advised of progress on installation of a lockable gate at the Oak Creek diversion structure. Also, as stated in your email a stream alteration permit may be required to do this work, please contact Charles Williamson, with our Stream Alt section at (801) 537-7404 for more information. The associated Parshall flume also leaks underneath and needs to be reset or sealed to prevent this and to insure accurate measurement.

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My intent in having you contact Kay Durfey about work on the parks pasture ditch was to coordinate Sandy and Notom efforts and to advise and manage the potential for sediment transport, and in addition work our agreements for joint use of the ditch. Common courtesy would dictate this, none of which was done, again a failure in communication on your part. Allow me to describe from my standpoint what transpired this past week that seemed to be omitted from your recent email:

Your phone call to the water commissioner on Monday 6/16/2016 to complain about the excess amount of 8 CFS of water at Notom, resulted in his investigation and finding that of large amounts of water was being sent through Parks Pasture to Rosebud, which ended up going down the Pleasant Creek drainage to Notom, along with quite a bit of sediment. These were diversion changes not made or authorized by the WC. The WC's subsequent call to you asking why and wanting to know who removed the tarp and dirt plug from the head of the parks pasture ditch at Oak Creek, may have come initially as a surprise, but later, possibly an embarrassment when you investigated the issue with your Sandy Ranch staff only to find Sandy Ranch Cowhands were responsible for the Tarp and dirt dam being removed. This excess water through parks pasture resulted in significant sediment washing and came close to washing out both the Rosebud structure and the reference flume just below the Notom Gate. The transfer desired by the Sandy Ranch hands, instead of going to Lower Bowns instead sent much this water in excess to Notom, as you saw, and none of this was coordinated with the WC. We appreciate your forthright and honesty in dealing with this matter.

Although, the Sandy Ranch hands were not advised that "someone else" was in charge of managing Sandy Ranch water, not them. I understand the Cowhands were well intended with this activity to send water towards Lower Bowns but much of this runs counter to the provisions covered under the aforementioned rule 73-1-7, along with other sections of Utah Water Law.

Again, Communication in this case is important and we appreciate your forthright acknowledgement of Sandy Ranch culpability in this matter, to the WC, about who was responsible for removing the tarp plug at the Oak Creek diversion. It is apparent to us that the Cowhands were not cognizant of who was managing the water in the area.

The division strongly recommends we be advised about such matters, primarily by the water manager in charge for Sandy Ranch Utah. We do not expect or will tolerate any repeat performances of this nature.

PP4: To address items mentioned in Paragraph 4, your comments are mostly self-congratulatory in nature and are un-warranted. Previous Sandy Ranch managers were able to effectively use the Upper Bowns-Oak Creek Reservoir and overflow water as natural flow and capture that water for use in irrigation down at the ranch diversion. Oak Creek water, all belongs to Sandy Ranch to manage, other than:

- 1) The 1 CFS late season transfers for Notom during late summer,
- 2) The management of your planned transfers from Oak Creek to lower Bowns to be done by the Water Commissioner, if they occur during irrigation season.

The Recent events described above, are more apparent of miss-management. You are incorrect in stating lower Bowns hasn't been full in years, since it was filled in 2011, during that high water year. Subsequent drought & recent low water years have resulted in "low water" in Lower Bowns 3 of the last 5 years, not mis-management on the part of the WC. The WC makes a focused effort each spring to send as much melt water to Lower Bowns as possible before having to split the flow at Rosebud, sometime after April 1st.

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This year, credit should be given to the Water Commissioner where due. The level of diligence by the Water Commissioner is the primary reason of recent gains were made in filling in Lower Bowns, along with the sustained run off in the drainage due to good snowpack this season. To be specific the “new managers- (sandy)” are not the ones responsible for filling the Lower Bowns reservoir, the Water Commissioner is, mainly by dividing the flow at Rosebud only when needed.

My understanding of the Sandy Ranch water system is to operate using Oak Creek water for a long into the irrigation season as possible, and meanwhile to fill Lower Bowns in the spring and early summer, with Pleasant creek water. When Oak Creek flows subside, revert to using Lower Bowns water to finish the end of season irrigation. It would be counter intuitive to start to drain Lower Bowns earlier than necessary when there is already sufficient flow being provided from Oak Creek. In good years, carryover water not used in Lower Bowns may provide a good start for the next Irrigation season. Transfers from Oak Creek to lower Bowns will serve to enhance levels in Lower Bowns, and should be coordinated with the Water Commissioner as described earlier.

I do appreciate to Sandy Ranch’s effort on replacing the Oak Creek dam release valve mechanism last year... however this repair was overdue and was needed to capture water for storage.

PP5 I was expecting your call Tuesday and never heard. Perhaps it will be later in the week. I was waiting to send this communication out, to hear from you but perhaps in sending this it may prompt your call. Nonetheless, the point is: communication about your actions concerning water management is critically important to the Division of Water rights, myself, the water commissioner, and the water users. Proper communication will enable us assist with your goals of water Management associated with Sandy Ranch- Utah. We will do what is necessary and within the legal bounds to enable better management of water in the Oak Creek – Lower Bowns System for Sandy Ranch, and this can only be enhanced with increased communication as we proceed forward.

PP6: I have forward your email to Everett Taylor regarding the Dam Safety inspection; he may have other requirements and will address this in a separate correspondence.

As a foot note: I reviewed some key points that address this matter per the Decree from Civil No. 111 and dated April of 1926, Between East Boulder Ranches and Durfey, Curtis, Baker & Hickman. Sixth Judicial District for Wayne County, Utah... Along with the Order (1956) and Stipulation (1926,1937) for same. As you had mentioned, John Mabey had reviewed some of these documents and can provide you with copies.

To summarize: Therein Part V there is a specific mention of a Water Commissioner to distribute said water to the parties in the case.

The decree describes in detail the responsibilities of each of the parties for maintenance of structures associated with diversions. This is particularly spelled out in section VI and VII of the Decree. Depending on how one might interpret what constitute the “lands or diversion systems” that belong to the respective Plaintiffs and Defendants would reasonable dictate who needs to maintain what on the system. Particularly mentioned was reasonably tight dams and head gates in the system.

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The traditional use of this Park Pasture (Oak Creek) ditch is to provide Pleasant Creek up to 1 CFS of water to be directed to Notom down the Pleasant creek through the Rosebud Diversion structure, only when there is less than 6.3 CFS of water at Notom's diversion on Pleasant Creek. Note there are also allowances for 1 CFS of winter "culinary" water from Nov 1 to March 31 of each year. Essentially this is the natural flow of Oak Creek without flow from the reservoir.

In closing, thanks for your email and we look forward to increased communication between Sandy Ranch Utah and The Division & Water Commissioner. Please advise us of your plans and observations along with activity and accomplishments concerning water in the area. The increased communication can only enhance our efforts with fair and equitable distribution of water in this area.

Sincerely,

A handwritten signature in cursive script that reads "Mike Silva".

Mike Silva
Distribution Engineer, Field Services
Utah Division of Water Rights

cc: Kay Durfey, Notom
John Mabey, MWJ Law
Kirk Forbush, Regional Engineer, Richfield
Utah Sandy Ranch
Distribution File